

ALASKA SUPERIOR COURT
THREE-JUDGE SENTENCING PANEL
DECISION SUMMARY

Hearing Date: April 11, 2008 in Palmer

Case No. 3PA-03-1098 CR
Defendant: Shane Harapat
Charge: Manslaughter (AS 11.41.120(a)(1))
Referred by: Judge Eric Smith
Panel: Judge Stephanie E. Joannides
Judge Joel Bolger
Judge Michael Thompson

BACKGROUND

On October 12, 2004, Defendant Shane Harapat was found guilty by a jury of manslaughter for the reckless shooting of his friend, Kenny Alcantra.¹ The presumptive sentence for this Class A felony is five years. On January 14, 2005, Judge Smith sentenced Mr. Harapat to serve five years. Judge Smith found that the non-statutory mitigating factor of extraordinary potential for rehabilitation had been established, but he declined to refer the case to the three-judge sentencing panel. Mr. Harapat appealed.

¹ A detailed description of the facts and circumstances of this case can be found in the PRESENTENCE REPORT, at 2-12. (attached)
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On December 28, 2007, the Alaska Court of Appeals affirmed Mr. Harapat's conviction but reversed Judge Smith's decision not to refer Mr. Harapat's case to the three-judge sentencing panel. In its opinion, the court articulated the two situations under which a sentencing judge should refer a case to the three-judge panel: 1) when a judge finds that manifest injustice would result if he failed to consider a relevant aggravating factor not listed in AS 12.55.155(c) or a relevant mitigating factor not listed in AS 12.55.155(d), and 2) when a judge determines that, even after adjusting the presumptive term to the extent allowed by AS 12.55.155(a) for the aggravating and mitigating factors listed in the statute, the presumptive sentencing law still mandates a sentencing range that would be manifestly unjust.²

According to the court, Judge Smith should have determined whether, because of the non-statutory mitigator, it would have been manifestly unjust to fail to make any adjustment to the presumptive sentence. The court held that "when the issue is close, sentencing judges should send a defendant's case to the three-judge sentencing panel."³ In accordance with that decision, this case came before the three-judge sentencing panel on April 11, 2008.

FINDINGS AND CONCLUSION

The three-judge sentencing panel met in Palmer on April 11, 2008. After listening to the arguments of counsel and hearing from the parents of the victim as well as Mr. Harapat, the panel determined that imposition of the presumptive term would not be manifestly unjust. The panel based its conclusion on its findings that

² See *Harapat v. State*, 174 P.3d 249, 253-54, (2007).

³ *Id.* at 255.

the case involved the reckless use of a firearm after the use of marijuana, a controlled substance. The panel also found that Mr. Harapat had received training in the use of firearms, that he was familiar with the use of firearms, and that evidence had been introduced at trial that suggested that he had in the past been at least negligent in the use of firearms.

Based on these circumstances, the panel found this to be an especially reckless use of a firearm. The panel's decision that the presumptive sentence would not result in manifest injustice was also supported by its consideration of the fact that the Alaska State Legislature has since increased the presumptive sentence for offenses such as this.

The matter was remanded to the sentencing judge for sentencing pursuant to statute. A transcript of the hearing before the three-judge sentencing panel, which includes the panel's oral findings, is attached and incorporated by reference. The Alaska Court of Appeals' opinion in *Harapat v. State* and the judgment issued by the three-judge sentencing panel are also attached.